Judicial sentencing considerations in cases of violent offenders versus sexual offenders

Dr Ninawa Butrus

Private Practice, Level 4, Suite 35, 240 Plenty Road, Bundoora, Melbourne VIC 3083, Australia

The overall aim of this study is to explore the judicial sentencing considerations in South Australian criminal cases of violent offenders versus sexual offenders in order to identify aggravating and mitigating factors. A total of 37 cases involving violent offenders ($n = 25$) and sexual offenders ($n = 12$) were downloaded from the Courts Administration Authority of South Australia website and subjected to a retrospective content analysis of the text contained in the published judicial sentencing remarks. The results reveal that offender- and offence-related aggravating factors are more salient judicial sentencing considerations in the cases of the violent offenders, whereas victim-related aggravating factors are more salient judicial considerations in the cases of the sexual offenders. Certain mitigating factors that were seen as salient considerations in the cases of the violent offenders – resulting in reduced culpability and a lighter sentence – appear to have had little impact in the cases of the sexual offenders. The implications of the findings for legal practice, social policy and future research are discussed.

Key words: aggravating factors; court; judicial; mitigating factors; sentence outcomes; sentencing; sexual offenders; violent offenders.

Introduction

Violent offences and sexual offences are amongst the most serious types of criminal offences and can attract strong penalties upon conviction (Hudson, 2012). Indeed, violent offenders and sexual offenders constitute a sizeable proportion of the incarcerated offender population in Australia (Australian Bureau of Statistics, 2016). According to the prisoner statistics from the National Prisoner Census held in 2016, the offences of ‘acts intended to cause injury’ and ‘sexual assault’ are respectively the first and second most common offences for which both male and female Australian offenders are sentenced and imprisoned (Australian Bureau of Statistics, 2016). Thus, it is important to

understand the aggravating and mitigating factors that judges take into consideration when sentencing these types of offenders. The overall aim of this research project is to explore the judicial sentencing considerations in Australian criminal cases of violent offenders versus sexual offenders. This opening section presents a literature review outlining sentencing considerations and examples of aggravating and mitigating factors, after which some research on the sentencing considerations and aggravating and mitigating factors in cases of violent offenders and sexual offenders is highlighted. The section concludes with the aims and research questions pertaining to the current study.

Correspondence: Dr Ninawa Butrus, Private Practice, Level 4, Suite 35, 240 Plenty Road, Bundoora, Melbourne VIC 3083, Australia. Phone: +61 0429902514. Email: nbutrus@hotmail.com

Sentencing considerations

Offender sentencing is undoubtedly a complex process. Common mainstream media depictions of offenders being ‘let off’ and judges being ‘soft on crime’ send the message that the Australian judiciary is ‘out of touch’ with community expectations regarding the sentencing of offenders (c.f., Mackenzie et al., 2012). In theory, aggravating and mitigating factors are central to judicial sentencing decisions in that they typically increase or decrease, respectively, the offender’s degree of culpability and, therefore, ultimately affect the type of sentence that is imposed (Bagaric & Edney, 2015). Over the years, a myriad of aggravating and mitigating factors have been derived from the statutes or common law (Bagaric & Edney, 2015), some examples of which are displayed in Table 1.

A central task of judges is to weigh up the aggravating and mitigating factors of each case carefully in order to arrive at a fair penalty. For instance, lack of remorse is ubiquitously viewed in the legal literature as an aggravating factor requiring punishment and, therefore, a longer sentence (Tudor, 2008). In contrast, mental disorder is commonly seen as a mitigating factor necessitating treatment and leniency in sentencing (Edgely, 2009; Ross & Lawrence, 2005). Interestingly, drug and alcohol addiction can be seen as either an

aggravating or mitigating factor, depending on certain case-specific issues (Bagaric & Edney, 2015). Once the aggravating and mitigating factors have been weighed up, the judge then decides on the type of sentence to impose, such as imprisonment versus a community-based order (Judicial Conference of Australia, n.d.). Since each case can theoretically involve multiple aggravating and mitigating factors, this can result in disparate sentences being handed down to offenders charged with similar offences. Accordingly, the relative salience of judicial sentencing considerations pertaining to specific aggravating and mitigating factors is important to understand and has implications for social policy and sentencing theory and practice (Bagaric, 2014). An overview of the current body of research on aggravating and mitigating factors is provided below.

Research on aggravating and mitigating factors

Opinion survey research with Canadian judges (Roberts & Edgar, 2006) and legal professionals from South Australia (Erez & Rogers, 1999) has revealed that victim impact statements are important to sentencing considerations because they provide useful information about the level of harm or injury

Table 1. Examples of general aggravating and mitigating factors.

Aggravating factors	Mitigating factors
Prior offending	Guilty plea
Level of harm caused	Cooperation with law enforcement
Victim impact statement	Remorse
Vulnerable victims including police officers	Psychiatric or psychological illness
Degree of planning	Drug or alcohol addiction
Offence committed at victim’s home	Intoxication
Breach of trust	Economically and socially disadvantaged background
Drug or alcohol addiction	Youth or old age
Damage to property	Good prospects of rehabilitation
Offence committed while on bail/parole	Absence of prior convictions and good character

Note: Adapted from Bagaric and Edney (2015).

suffered by the victim, which often aggravates the sentence that is imposed on the offender (Bagaric & Edney, 2015). This raises the following question: are aggravating factors more important considerations than mitigating factors when deciding sentence length?

The recent findings of a Victorian jury survey reveal that jurors from 124 criminal trials indeed ranked aggravating factors as relatively more important than mitigating factors with regard to determining sentence length across a mixed sample of criminal cases (Warner, Davis, Spiranovic, Cockburn, & Freiberg, 2017). Specifically, the jurors ranked four offence-related aggravating factors (i.e. abused trust/power; victim was vulnerable; injury/harm/loss was substantial; and planned/organised offence) as more important determinants of sentence length than four offender-related aggravating factors (i.e. prior convictions; offender on bail; offender on parole; and offender on suspended sentence or community order). Moreover, the jurors generally gave little weight to any of the ten identified mitigating factors (i.e. good prospects of rehabilitation; first-time offender; remorse; good character; youth; social disadvantage; family dependent on offender; offender was sexually/physically abused; physical health issues; and old age) and recommended more punitive sentences in cases of child sexual abuse. Whilst such public opinion research is important, the relative importance of aggravating versus mitigating factors in actual cases of sentenced offenders has received little empirical attention. Two key studies that explore this issue are described next.

In the first study, Welsh and Ogloff (2008) explore judicial sentencing remarks in order to identify the aggravating and mitigating factors that judges considered when sentencing a mixed sample of 691 Canadian offenders. The results reveal that offenders were less often sentenced to imprisonment if the judge cited mitigating factors such as reduced culpability, rehabilitative efforts, a

guilty plea and a disadvantaged background. In contrast, offenders were more often sentenced to imprisonment if the judge cited aggravating factors such as the use or threat of violence, victim vulnerability and a prior criminal history. Overall, offenders more often received prison terms if they were convicted of serious offences and had a prior criminal history.

In the second study, van Wingerden, van Wilsem, and Johnson (2016) reviewed the pre-sentence reports of a mixed sample of over 21,000 Dutch offenders who were charged with various criminal offences, in order to investigate whether or not an offender's personal circumstances impacted on the likelihood and length of a custodial sentence. Assault was the most common charge levelled at the offenders in the sample. The results indicate that female offenders were less often sentenced to imprisonment and generally received shorter sentences when they were imprisoned, ostensibly due to their mitigating carer responsibilities or health and/or emotional issues. Similarly, younger offenders were also less often imprisoned and received shorter sentences, ostensibly because their youth was seen as mitigating their level of culpability. Overall, offenders were more often sentenced to imprisonment and with longer prison terms if their personal circumstances included aggravating factors such as being born in a foreign country, having accommodation problems, having criminal companions, failing to cooperate with authorities, denying responsibility for offending, showing a lack of remorse and having financial problems. Conversely, offenders were less often sentenced to imprisonment and/or received shorter prison terms if their personal circumstances included psychological problems and/or substance use problems.

Whilst the aforementioned studies provide some useful information about judicial sentencing considerations, they are nonetheless hampered by several methodological limitations. Notably, since the authors of both

studies group all offenders and their respective charges together into one mixed criminal sample, it is not possible to explicate the aggravating and mitigating factors for the divergent groups of offenders or explore any differences that might exist. A brief overview of the findings from the few studies that have examined the relative importance of aggravating and mitigating factors in specific cases of violent offenders or sexual offenders is provided next.

Previous research about aggravating and mitigating factors for violent offenders

Relatively few studies have explored the aggravating and mitigating factors in cases of violent offenders. In early work on this subject, Simon (1996) examined the impact that the offender–victim relationship has on the sentence length for violent crimes. Simon interviewed 273 prisoners from the state of Arizona in the United States (US) who had been convicted for violent crimes such as homicide, robbery and assault. The results reveal that the violent offenders who victimised strangers, used a weapon, injured their victims, were convicted of more serious charges, had longer adult criminal records and/or did not plead guilty subsequently received longer prison sentences.

More recently, Davidson and Rosky (2015) used national inmate survey data from the US to explore whether or not the offender's demographic details and the features of the trial have unique impacts on the sentence length for violent convictions. The results for males indicate that being Black, having drug or alcohol problems and/or having mental health problems generally increased the sentence length for violent convictions, whereas pleading guilty reduced the sentence length. In contrast, the results for females indicate that ethnicity and pleading guilty produced a mixed impact on the sentence length. Moreover, females with longer prior criminal histories and/or drug and alcohol problems tended to receive longer

sentences for violent convictions, whereas those with mental health problems tended to receive shorter sentences. Davidson and Rosky conclude that their findings suggest that gender-role stereotypes mediate whether or not perceived diminished capacity and dangerousness impact on judicial sentencing decisions for violent offenders.

Previous research about aggravating and mitigating factors for sexual offenders

In contrast to violent offenders, there has been relatively more research on the aggravating and mitigating factors in cases of sexual offenders. Four salient studies are described below.

In the first study, McCormick, Maric, Seto, and Barbaree (1998) explore whether or not the offender–victim relationship impacts the sentence length in Canadian sexual assault cases. They reviewed the clinical files of 204 incarcerated rapists and grouped them into three categories according to their relationship with the victim, resulting in 103 stranger rapists, 36 acquaintance rapists and 65 partner rapists. A regression analysis controlling for demographic information, prior criminal history and index offence characteristics revealed that instrumentality of force and offender–victim relationship are salient predictors of sentence length. Overall, rapes of strangers, the use of more force and greater physical injuries being sustained by victims resulted in longer sentences. This finding is in line with that of Simon (1996) in the aforementioned study about violent offenders. The authors suggested that judges may perceive stranger rapes to be more serious than the rape of acquaintances or partners, thus aggravating the sentence that is imposed.

An Australian study by Deering and Mellor (2009) reviewed sentencing remarks from the County Court of Victoria to compare the mitigating factors and sentence outcomes in seven cases of female perpetrators of child sexual abuse versus seven matched cases of male perpetrators of child sexual abuse. The

content analysis revealed that all offenders were sentenced to terms of imprisonment but that the female offenders received shorter sentences and were treated sympathetically in comparison to the matched male offenders due to greater emphasis being placed on their mitigating factors and prospects of rehabilitation. Notably, the sentencing remarks for the female offenders frequently refer to mitigating factors which were seen to reduce their culpability, such as personal adversities, being a victim of childhood sexual abuse, psychological issues, male coercion and difficulties with intimate relationships. In contrast, when mitigating factors such as psychological issues or being a victim of childhood sexual abuse were raised in the cases of the male perpetrators they were nonetheless viewed as having offended due to sexual desire or for self-indulgent reasons, thus increasing their culpability and aggravating their sentence.

Patrick and Marsh (2011) reviewed the court records of over 1000 convicted child sex offenders from the US state of Idaho, and their multivariate analyses reveal that the characteristics of the offender (e.g. age, higher income), the victim (e.g. younger victim, many victims) and the offence (e.g. total number of charges, use of force) are all aggravating factors that increase the likelihood of a custodial sentence. Yet, the characteristics of the offence were found to be the most salient predictors of sentencing outcome.

Finally, Amirault and Beauregard (2014) recently reviewed the correctional files of 519 convicted sex offenders from Canada to explore the aggravating and mitigating factors that affected their sentencing outcomes. The results reveal that the offence characteristics (e.g. victim is a stranger, use of a weapon) are generally more predictive of the sentence severity in the subsample of offenders who victimised adults, whereas the offender characteristics (e.g. age, prior history, admitting to sexual issues, current additional charges) are generally more

predictive of the sentence severity in the subsample of offenders who victimised children.

The current study

The extant studies have all explored aggravating and mitigating factors using either mixed criminal samples (van Wingerden et al., 2016; Welsh & Ogloff, 2008) or specific samples of either violent offenders (Davidson & Rosky, 2015; Simon, 1996) or sexual offenders (Amirault & Beauregard, 2014; Deering & Mellor, 2009; McCormick et al., 1998; Patrick & Marsh, 2011). No previous study could be located whereby the aggravating and mitigating factors in the cases of violent offenders were directly compared with the factors in the cases of sexual offenders. Further, the ways in which aggravating and mitigating factors operate and impact on the ultimate sentence that is imposed by a judge in actual criminal cases remains poorly understood from a practical standpoint. Why do offenders with the same charge(s) get different sentences? This is an important social and political question that has substantial policy implications given the common mainstream media depictions of judges being 'soft on crime'. Overall, there has been little qualitative research to date that has explored judicial sentencing remarks in order to better understand how aggravating and mitigating factors are factored into real-life decisions about sentencing. Indeed, only the aforementioned studies by Welsh and Ogloff (2008) and Deering and Mellor (2009) actually used judicial sentencing remarks in their methodologies. Moreover, there is a dearth of Australian research on this topic. Thus, the present study is designed to fill these important gaps in the literature.

The aim of this study is to review judicial sentencing remarks to explore whether or not different aggravating and mitigating factors are considered by Australian judges in the cases of violent offenders versus sexual offenders. Given the lack of prior research, the current study is exploratory in nature and

no specific hypotheses were formulated. Rather, the specific research question that this study aims to answer is: what are the aggravating and mitigating factors that judges consider when sentencing violent offenders versus sexual offenders? Qualitative research methodology is used to answer this research question, as is described in the next section.

Method and analysis

Approval to conduct this research was provided by the Griffith University Human Research Ethics Committee on the proviso that no identifying information about anyone involved in the cases was included in this report (e.g., case number or legal citation, offender's name, judge's name, victim's name, etc.).

This research project is exploratory in nature and utilises qualitative research methods, namely retrospective content analysis of the text contained in published judicial sentencing remarks. Specifically, the data used in this study was extracted from the text of the judicial sentencing remarks from recent criminal cases that were heard in the District and Supreme Courts of South Australia during June and July 2017. The sentencing remarks are verbatim transcripts of judges handing down sentences to offenders during sentencing hearings and are made publicly available via the Courts Administration Authority of South Australia website (<http://www.courts.sa.gov.au/SentencingRemarks/Pages/default.aspx>). The website lists only four weeks' worth of sentencing remarks. This website was accessed on 21 July 2017 and the sentencing remarks from all 104 criminal cases that were available on that date were downloaded. The sentence hearing dates for these criminal cases range from 15 June to 19 July 2017. This sample of sentencing remarks represents a snapshot of the criminal cases that were decided during the relevant time period and made available on the website.

Lune and Berg's (2017) procedures for performing content analysis were followed in the present study. Firstly, the sentencing remarks pertaining to all 104 criminal cases were screened, and only those cases involving violent offences ($n = 25$) and sexual offences ($n = 12$) were shortlisted for analysis, resulting in a total of 37 cases.

Next, the sentencing remarks pertaining to these 37 shortlisted cases were reviewed for a second time whereby a content analysis was performed to extract key descriptive data themes, namely the age of the offender at the time of sentencing, the gender of the offender, the type and number of charges, the offender's relationship to the victim(s), the maximum possible sentencing penalty for the offender's charges, the actual sentence received, the maximum and minimum prison term in months and the aggravating and mitigating factors mentioned in the sentencing remarks. The data was initially entered into an Excel spreadsheet and then exported into SPSS for further coding and analysis via descriptive analyses.

Importantly, the aggravating and mitigating factors in each case were identified using content analysis then subsequently sorted and coded into thematic categories using an iterative process (Lune & Berg, 2017). For example, the aggravating factors 'Victim youth and vulnerability' (Case 4), 'Victims were defenceless and innocent' (Case 5), 'Very young age of victims' (Case 13) and 'Young victim' (Case 16) are all coded under the theme of *age/vulnerability of victims*. Similarly, the mitigating factors 'Thought about apologising to the victim' (Case 1), 'Genuinely remorseful for offending, wrote letter of apology to victim and showed contrition' (Case 12), 'Contrite and wrote victim an apology letter' (Case 18) and 'Regrets behaviour and wrote apology letter to the victim' (Case 28) are all coded under the theme of *expressed some contrition/remorse*. In line with Bagaric and Edney (2015), 'Substance use problems' is coded as both an aggravating and a mitigating factor. The full list of identified aggravating and mitigating

factors are presented in the Results section below.

Results

Violent offenders

Characteristics of the violent offender cases

Table 2 displays the descriptive case characteristics of the violent offenders at sentencing. There are 25 violent offenders, with only 2 females in the sample. The average age at sentencing is 34 years ($SD = 13.7$, range = 20–75) and the average number of charges is 2.80 ($SD = 2.72$, range = 1–14). The charges are varied and include murder, manslaughter, aggravated assault, aggravated robbery, aggravated theft causing harm, aggravated causing harm, solicit to murder, false imprisonment, aggravated endangering life, aggravated threatening life and threatening to cause harm. The victims are also varied and include partners, family members, acquaintances, strangers, store workers and police officers. Except for 3 cases wherein the information is not available, the maximum possible penalties for the charges pertaining to this group all involve prison terms. However, as can be discerned from Table 2, all of the violent offenders received considerably shorter sentences than the prescribed maximum possible penalties for their charges. Specifically, 18 violent offenders received a term of imprisonment, 6 received a bond and 1 received a supervision order. Moreover, of the violent offenders who received a sentence of imprisonment, only 3 were sentenced to serve their maximum prison term (Cases 2, 15 and 36). The average minimum prison term length for the violent offender group is 44.76 months ($SD = 70.98$, range = 0–240).

Aggravating and mitigating factors in the violent offender cases

Table 3 displays the aggravating and mitigating factors in the cases involving violent offenders. As mentioned previously,

substance use problems is coded as both an aggravating and a mitigating factor. Overall, the most common aggravating factors across the cases involving violent offenders are prior offending (22), substance use problems (21), serious violent offending (20), past violence (16), prolonged effects on victim (13), victim impact statement (12), used a weapon (10), soft target (7), disregard for/prior breaches of court orders (4), deliberate actions (3), series of offending (2), did not cooperate with police (2), lack of apology to victim (1), not deterred by prior sentences (1) and no contrition/remorse (1).

The most common mitigating factors in the cases involving violent offenders are substance use problems (21), pled guilty (20), childhood adversity (17), mental health issues (13), expressed some contrition/remorse (11), engaging in rehabilitation (7), age (7), intoxication (7), not premeditated (5), offending was out of character (4), health problems (4), employment (3), cooperated with police (3), no past violence (2), exceptional circumstances (2), did not instigate offending (2), did not use greater force (2), good rehabilitation prospects (2), no/few prior convictions (2), accepted responsibility (1), positive support (1), time already served (1), Aboriginal background (1), carer responsibilities (1), rendered assistance to victim (1), victim's abusive behaviour (1) and disadvantage (1).

Further, for the 7 cases in which the offender was not sentenced to a term of imprisonment, the judge's sentencing remarks seem to place more weight on the mitigating factors, namely good rehabilitation efforts/prospects (Cases 1, 7, 32 and 33), severe psychiatric issues (Case 9), exceptional circumstances (Case 17) and elderly offender (Case 27).

Sexual offenders

Characteristics of the sexual offender cases

Table 4 displays the case characteristics of the sexual offenders at sentencing. There are

Table 2. Characteristics of the violent offender cases at sentencing.

ID	Age (years)	Gender	Charges	Victim(s)	Maximum possible penalty	Sentence received	Minimum prison term (months)	Maximum prison term (months)
1	30	Male	Aggravated serious criminal trespass in a place of residence; Assault causing harm	Father of friend	Life imprisonment	Bond	0	0
2	37	Male	Murder	Domestic partner	Life imprisonment	Prison	240	240
6	53	Male	Solicit to murder; Aggravated threatening life (x2)	Ex-partner	Life imprisonment	Prison	83	132
7	26	Male	Breach of bond; Aggravated assault of a police officer; Possessing methylamphetamine; Assault; Assault police	Mother; 2 police officers	3 years of imprisonment	Bond	0	0
9	37	Male	Aggravated robbery	Proprietors of takeaway shop	Not stated	Supervision	0	0
10	28	Male	Aggravated theft using force	Service station owner	Not stated	Prison	30	50
12	40	Male	Aggravated theft using force	Elderly woman	Life imprisonment	Prison	24	38
14	24	Male	Aggravated assault with a weapon against a police officer; Aggravated causing harm; Resisting arrest	Police officers	13 years of imprisonment	Prison	36	51
15	30	Male	Assault causing harm; Assault; Breach of intervention order	Partner	3 years of imprisonment	Prison	10	10
17	29	Female	Aggravated robbery	Service station attendant	Life imprisonment	Bond	0	0
18	45	Male	Aggravated causing harm with intent to cause harm (x3); Aggravated assault; Breach bond	Acquaintance	13 years of imprisonment	Prison	40	67
19	20	Female	Manslaughter	Partner	Life imprisonment	Prison	42	84
20	22	Male	Aggravated robbery	Acquaintance	Life imprisonment	Prison	18	48
23	28	Male	Threatening to cause harm; Damaging property; Assault causing harm	Ex-partner	5 years of imprisonment	Prison	8	12
24	22	Male	Aggravated robbery; Aggravated possession of a prescribed firearm; Unlawful possession of firearm; Resisting arrest	Store attendants	Life imprisonment	Prison	30	62
26	23	Male	Attempted aggravated robbery	Elderly woman	12 years of imprisonment	Prison	20	46
27	75	Male	Aggravated assault	Elderly neighbour	3 years of imprisonment	Bond	0	0
28	–	Male	Assault (x2); Damaging property; Threatening harm	Ex-partner	10 years of imprisonment	Prison	12	23

(continued)

Table 2. (Continued)

ID	Age (years)	Gender	Charges	Victim(s)	Maximum possible penalty	Sentence received	Minimum prison term (months)	Maximum prison term (months)
30	21	Male	Attempted aggravated robbery; Aggravated assault; Breach of bond	Pizza shop workers; Mother's partner	12 years of imprisonment	Prison	18	36
31	24	Male	Aggravated serious criminal trespass in a place of residence; Aggravated assault (x2); Aggravated assault causing harm	Mother; Father; Girlfriend's brother	Life imprisonment	Prison	18	34
32	34	Male	Aggravated criminal trespass in a place of residence; Aggravated assault (x2)	Neighbour	5 years of imprisonment	Bond	0	0
33	33	Male	Aggravated criminal trespass in a place of residence; Aggravated assault	Friend's neighbours	5 years of imprisonment	Bond	0	0
35	–	Male	Use of false evidence; Serious criminal trespass in a non-residential property; Damage property; Aggravated serious criminal trespass in a place of residence; Aggravated endangering life; Aggravated robbery (x4); Aggravated causing serious harm with intent to cause serious harm (x2); False imprisonment	Multiple acquaintances	Life imprisonment	Prison	192	288
36	58	Male	Murder	Acquaintance	Life imprisonment	Prison	240	240
37	47	Male	Manslaughter	Neighbour	Not stated	Prison	58	92

Table 3. Aggravating and mitigating factors in the violent offender cases.

ID	Aggravating factors	Mitigating factors
1	Prior offending; Past violence; Disregard for/previous breaches of court orders; Lack of apology to victim; Substance use problems	Pled guilty; Thought about apologising to victim (Expressed some contrition/remorse); Seeking professional help for his tendency to be violent (Engaging in rehabilitation); Substance use problems; Employment; Cooperated with police; Childhood adversity; Mental health issues
2	Placed victim's body in the car and left two children in the car with the victim causing further significant trauma for children, investigators and victim's family; Serious violent offending; Victim impact statements	Severe insomnia and severe depressive disorder characterised by agitation and irritability leading to impairments to his cognitive and emotional functioning (Mental health issues); Reduced ability to control emotions (Mental health issues); Acknowledged his destructive actions and their impacts on family members (Accepted responsibility); Childhood adversity; Unusual factors call for a merciful approach to sentencing (Exceptional circumstances); Lack of history of domestic violence (No past violence); Remorse (Expressed contrition/remorse); Did not seek to blame the victim (Accepted responsibility)
6	Victim impact statement; Offences involved a level of premeditation and planning against a backdrop of family violence (Deliberate actions); Serious violent offending; Past violence; Substance use problems	Substance use problems; Expressed some contrition after trial prior to sentencing (Expressed contrition/remorse); Childhood adversity
7	Prior offending; Substance use problems	Pled guilty; Relatively young (Age); Demonstrated work ethic (Employment); Support of a stable parent figure and family support (Positive support); Abstained from drugs and has taken positive steps towards rehabilitation (Engaging in rehabilitation); Already served 5 months in custody (Time already served); Rehabilitation services are more readily available in the community and it would be counterproductive to disrupt the progress made thus far; Safety of the community is better served by allowing offender to continue rehabilitation in the community rather than requiring him to serve imprisonment (Good rehabilitation prospects); Childhood adversity; Offences committed in the context of drug addiction (Intoxication and Substance use problems)
9	Prolonged effects on victim; Used a weapon; Past violence; Prior offending	Longstanding history of treatment-resistant schizophrenia with little insight (Mental health issues); Requires continuing treatment (Health problems); Has been in a secure psychiatric facility since May 2016 (Mental health issues)

(continued)

Table 3. (Continued)

ID	Aggravating factors	Mitigating factors
10	Serious violent offending; Used a weapon; Past violence; Prior offending; Substance use problems	Pled guilty; Was using drugs on the day of the offending (Intoxication and Substance use problems); Cooperated with police; Expressed contrition and remorse
12	Serious violent offending; Elderly victim (Soft target); Victim impact statement; Prolonged effects on victim; Prior offending; Substance use problems	Pled guilty; Genuinely remorseful for offending, wrote letter of apology to victim and showed contrition (Expressed some contrition/remorse); Childhood adversity; Motivated to participate in rehabilitation (Engaging in rehabilitation); Chronic opiate addiction but abstinent from drugs whilst in custody (Substance use problems)
14	Serious violent offending against police officers; Used a weapon; Offences committed in remote area where police assistance is not readily available and medical facilities are rudimentary (Soft target); Prior offending; Past violence	Pled guilty; Aboriginal background
15	Little regard for court orders (Disregard for/previous breaches of court orders); Thuggish violent acts (Serious violent offending); Victim impact statement; Prolonged effects on victim; Prior offending; Substance use problems	Pled guilty to some offences; Substance use problems
17	Serious violent offending; Offending against vulnerable victim who was working alone at night (Soft target); Prolonged effects on victim; Past violence; Prior offending; Substance use problems	Exceptional circumstances; Single parent raising three children who are emotionally and financially dependent on her and incarceration would have a detrimental effect on her children (Carer responsibilities); Was intoxicated at the time of the offence (Intoxication); Victim stated that the offender appeared shocked when her sister instigated the offending (Did not instigate offending); Offending was not premeditated (Not premeditated); Offending was out of character; Difficult and dysfunctional background (Childhood adversity); Substance use problems
18	Serious violent offending; Prior offending; Used a weapon; Past violence; Substance use problems	Pled guilty; Contrite and wrote victim an apology letter (Expressed some contrition/remorse); Substance use problems
19	Victim's family suffered pain, grief and loss of financial support and victim's three children are left without a father (Prolonged effects on victims); Used a weapon; Substance use problems	No intention to kill, impulsive, unpremeditated act (Not premeditated); Immediately regretted her actions, called for assistance and tried to render first aid (Rendered assistance to victim); Pled guilty at an early stage which facilitated the administration of justice and avoided a trial (Pled guilty); Cooperated with police; Young age (Age); No prior convictions and otherwise a person of good character (No/few prior convictions); Experienced a difficult and

(continued)

Table 3. (*Continued*)

ID	Aggravating factors	Mitigating factors
		traumatic upbringing as a child in a war-torn country (Childhood adversity); Anxiety and depression (Mental health issues); Substance use problems; Remorseful (Expressed some contrition/remorse); Victim's abusive behaviour substantially mitigates offender's conduct
20	Victim impact statement; Prolonged effects on victim; Serious violent offending; Used a weapon; Past violence; Prior offending; Substance use problems	Pled guilty; Youth (Age); Lack of a serious criminal record (No/few prior convictions); Childhood adversity; Substance use problems
23	Victim impact statement; Prolonged effects on victim; Serious and despicable offending (Serious violent offending); Entered house of a defenceless woman (Soft target); Substance use problems; Prior offending; Past violence	Pled guilty; Longstanding mental health problems (Mental health issues); Childhood adversity; Substance use problems
24	Serious aggravated robbery on a soft target (Serious violent offending and Soft target); Used a weapon; Extended spate of offending (Series of offending); Prior offending; Substance use problems	Pled guilty; Youth (Age); Disadvantaged upbringing (Childhood adversity); Mental health issues; Substance use problems
26	Chose a soft target (Soft target); Offended whilst on parole (Disregard for/previous breaches of court orders); Past violence; Prior offending; Substance use problems	Pled guilty; Mental health issues; Substance use problems; Homeless at the time (Disadvantage); Did not use greater force and did not have a weapon; Childhood adversity
27	Serious violent offending; Victim impact statement; Prolonged effects on victim; Prior offending; Substance use problems	Pled guilty; Old age; Health problems; Significant business interests (Employment); No priors for violence (No past violence); Anxiety (Mental health issues); Substance use problems
28	Serious violent offending; Offences were not isolated (Series of offending); Past violence; Victim impact statement; Prolonged effects on victim; Prior offending; Substance use problems	Pled guilty; Age; Good rehabilitation prospects; Mental health issues; Regrets behaviour and wrote apology letter to the victim (Expressed contrition/remorse); Substance use problems
30	Serious violent offending; Used a weapon; Past violence; Prior offending; Substance use problems	Pled guilty; Mental health issues; Was heavily under the influence of amphetamines at the time (Intoxication); Substance use problems; Childhood adversity
31	Serious violent offending; Victim impact statements; Prolonged effects on victims; Not deterred by previous lengthy prison term for manslaughter; Failed to comply with parole (Disregard for/previous breaches of court orders); Used a weapon; Did not cooperate with police; Past violence; Prior offending; Substance use problems; Committed the offences three weeks after being released into the community	Pled guilty; Youth (Age); Expressed remorse and contrition for offending, wrote letter of apology to victims and showed some insight into the reason for offending (Expressed some contrition/remorse); Expressed willingness to engage with rehabilitative programmes (Engaging in rehabilitation); Dysfunctional and terrible upbringing (Childhood adversity); Offending linked to alcohol use as was intoxicated at the time (Intoxication); Substance use problems; Mental health issues;

(continued)

Table 3. (Continued)

ID	Aggravating factors	Mitigating factors
		Offending was instigated by girlfriend (Did not instigate offending)
32	Serious violent offending; Victim impact statements; Prolonged effects on victims; Prior offending; Substance use problems; No justification to enter victim's house in the middle of the night and assault the victim (Soft target); Past violence	Pled guilty; Health problems; Commenced rehabilitation (Engaging in rehabilitation); Spontaneous offending (Not premeditated); Good character letters and references (Offending was out of character); Childhood adversity; Mental health issues; Substance use problems
33	Serious violent offending; Victim impact statements; Prolonged effects on victims; Prior offending; Substance use problems	Pled guilty; Spontaneous offending (Not premeditated); Commenced rehabilitation (Engaging in rehabilitation); Good character letters and references (Offending was out of character); Childhood adversity; Substance use problems
35	Multiple serious violent offences; Callous attacks involved violence and cruelty (Deliberate actions); Serious repeat offender (Prior offending); Used a weapon; Past violence; Substance use problems	Pled guilty; Expressed some contrition for some offences (Expressed some contrition/remorse); Willing to participate in rehabilitation programmes (Engaging in rehabilitation); Childhood adversity; Mental health issues; Substance use problems
36	Serious violent offending; No contrition; Did not cooperate with police; No evidence of having commenced on a path to rehabilitation (No contrition/remorse); Prior offending; Victim impact statements; Offender's actions have caused irreparable harm and loss to victim's family (Prolonged effects on victims)	Medical condition of traumatic brain injury (Health problems)
37	Serious violent offending; Deliberate infliction of a punch or kick to the head or neck area is a serious aggravating feature; Past violence; Prior offending; Substance use problems; Antipathy to the deceased because he was a drug dealer but vigilante-type crimes cannot be tolerated (Deliberate actions)	Pled guilty; Showed contrition and apologised to victim's family (Expressed some contrition/remorse); Was intoxicated at the time and disinhibited because of the effects of alcohol and cannabis (Intoxication); Substance use problems; No weapon involved (Did not use greater force); Spur-of-the-moment offending without pre-planning (Not premeditated); Childhood adversity

12 sexual offenders, all of which were males. The average age at sentencing is 47 years ($SD = 15.90$, range = 22–75) and the average number of charges is 3.67 ($SD = 3.11$, range = 1–10). The charges are varied and include rape, unlawful sexual intercourse with a child, persistent sexual exploitation of a child, aggravated indecent assault and gross indecency. The victims include family members,

acquaintances and strangers. Except for 2 cases wherein the information is not available, the maximum possible penalties for the charges pertaining to this group all involve prison terms, predominantly life imprisonment. In contrast to the violent offenders, all sexual offenders were sentenced to imprisonment. However, all sexual offenders were sentenced to serve only minimum prison

Table 4. Characteristics of the sexual offender cases at sentencing.

ID	Age (years)	Gender	Charges	Victim(s)	Maximum possible penalty	Sentence received	Minimum prison term (months)	Maximum prison term (months)
3	27	Male	Unlawful sexual intercourse with a person under 14	Brother's girlfriend	Life imprisonment	Prison	23	47
4	56	Male	Unlawful sexual intercourse with a person under 12 (x3); Gross indecency	Great niece	Life imprisonment	Prison	65	129
5	75	Male	Indecently assaulting children under 12 (x7); Unlawful sexual intercourse with a child under 12	Various young children known to the offender	Not stated	Prison	84	144
8	22	Male	Rape; Indecent assault	Tourists	Life imprisonment	Prison	36	64
11	58	Male	Aggravated indecent assault; Gross indecency	Daughter's friends	10 years imprisonment	Prison	22	44
13	53	Male	Persistent sexual exploitation of a child under 17; Aggravated indecent assault of a child under 12	Neighbour's 2 young daughters	Life imprisonment	Prison	42	90
16	52	Male	Aggravated indecent assault	5-year-old boy whom the offender cared for at a childcare centre	10 years imprisonment	Prison	20	30
21	47	Male	Unlawful sexual intercourse with a girl under 14 (x2); Aggravated indecent assault (x4)	Partner's niece	10 years imprisonment	Prison	33	72
22	43	Male	Unlawful sexual intercourse with a person under 14	Friend's daughter	Life imprisonment	Prison	24	42
25	68	Male	Persistent sexual exploitation of a child	Daughter	Life imprisonment	Prison	42	65
29	33	Male	Aggravated indecent assault; Aggravated production of child pornography; Aggravated possession of child pornography; Inciting or procuring an act of gross indecency by a child; Unlawful sexual intercourse with a child under 14 years (x2)	6-year-old niece	Not stated	Prison	14	36
34	39	Male	Aggravated serious criminal trespass in a place of residence; Unlawful detention (x2); Aggravated indecent assault (x2); Rape (x2); Theft; Attempted rape; Breach of bond	Strangers	Life imprisonment	Prison	117	162

Table 5. Aggravating and mitigating factors in the sexual offender cases

ID	Aggravating factors	Mitigating factors
3	Victim impact statements; Breach of trust; Prolonged effects on victim; Serious offending; Prior offending; History of substance use problems	Pled guilty; Has carer responsibilities (siblings); Accepted responsibility for offending; Was intoxicated at time of offending; Motivated to engage in treatment; Mental health issues; Childhood adversity; Age (young); Cooperated with police; Substance use problems
4	Victim impact statements; Breach of trust; Prolonged effects on victim; Serious offending against a child for 20 months; Prior offending; Victim youth and vulnerability (Age/vulnerability of victims); Violent and degrading offending	Pled guilty; Wrote apology letter and expressed shame and regret (Accepted responsibility for offending); Motivated to engage in treatment to address problems
5	Failed to take responsibility for actions; Failed to plead guilty; No contrition or remorse; Serious offending; Breach of trust; Offender is a paedophile who opportunistically abused five children who were either visiting him or left in his care; Victims were defenceless and innocent (Age/vulnerability of victims); Prolonged effects on victims	Has carer responsibilities (wife); Health problems; Age (advanced); Paedophilia disorder (Mental health issues)
8	Victim impact statement; Serious effects on victim; Serious offending; Substance use problems; Past violence; Prior offending	Pled guilty; Was intoxicated at time of offending; Less serious type of offending for offence category
11	Serious extensive offending involving two girls; Breach of trust; Prolonged effects on victims; Substance use problems	Pled guilty; Mental health issues; Substance use problems
13	Very young age of victims (Age/vulnerability of victims); Persistent offending with one victim; Breach of trust; Substance use problems	Pled guilty; Showed remorse; Childhood adversity; Substance use problems
16	Serious offending; Young victim (Age/vulnerability of victims); Not a spontaneous act, but occurred sometime after offender ingratiated himself with the boy in the months leading up to the offending; Breach of trust; Family's victim impact statements indicate the offending has had a terrible impact on the child's family; Child's family is left feeling confused, upset and traumatised; Prolonged effects on victim and family; Prior offending; Offender did not spare the victim's family a trial; Complete lack of remorse, insight or contrition; Continues to maintain his innocence	No relevant prior convictions; Offending comprised an isolated occasion of indecent touching (Less serious type of offending for offence category); Mental health issues
21	Victim impact statement; Prolonged effects on victim; Refused to admit responsibility (Lack of remorse); Serious offending	No past criminal record; No reoffending for 10 years since index offences occurred; Good prospects of rehabilitation; Unlikely to reoffend thus poses little further risk to the community (Reduced risk of reoffending)
22	Serious offending; Offender took advantage of a young girl who thought she was in the safety of	No past criminal record; Opportunistic offending with no grooming involved (Less serious type

(continued)

Table 5. (Continued)

ID	Aggravating factors	Mitigating factors
	a friend's home for his own gratification (Age/vulnerability of victims and Breach of trust); Substance use problems; Victim impact statements; Prolonged effects on victim	of offending for offence category); Mental health issues; Substance use problems
25	Serious offending; Breach of trust; Sustained and persistent offending; Victim impact statement detailed the profound and devastating impact on the victim; Prior offending	Pled guilty; Showed remorse; Motivated to engage in treatment; Psychologist said offender made insights into his offending (Reduced risk of reoffending); Made full admissions (Accepted responsibility); Mental health issues; Cooperated with police; Childhood adversity
29	Serious offending; Extremely poor prospects of rehabilitation; Past violence; Continued denials of being sexually attracted to children and minimisation of offending; Prior offending; Prolonged effects on victim	Pled guilty; Age; Complex psychological profile; Childhood adversity; Mental health issues
34	Serious offending over time; Child in the house; Victims had to witness seeing and hearing offences committed upon each other; Premeditated offending calculated to cause trauma to the victims; Was disguised when entered the premises, carried a weapon and was cognisant of the need to try to eliminate evidence of his presence by wiping down surfaces before leaving; Limited insight into offending or its consequences; Prior offending which has escalated over time; Substance use problems; Victim impact statements; Prolonged effects on victims	Pled guilty; Substance use problems

terms. The average minimum prison term length for the sexual offender group is 43.50 months (*SD* = 30.69, range = 14–117).

Aggravating and mitigating factors in the sexual offender cases

Table 5 displays the aggravating and mitigating factors in the cases involving sexual offenders. As per the violent offender cases, substance use problems is coded as both an aggravating and a mitigating factor. Overall, the most common aggravating factors across the cases of sexual offenders are serious offending (11), prolonged effects on victim (10), victim impact statements (8), breach of

trust (8), prior offending (6), age/vulnerability of victims (5), history of substance use problems (5) and denial/lack of remorse/refusal to accept responsibility (4).

The most common mitigating factors in the cases involving sexual offenders are pled guilty (8), mental health issues (7), substance use problems (5), childhood adversity (4), accepted responsibility for offending/showed remorse (3), motivated to engage in treatment (3), age (3), no relevant past criminal record (3), less serious type of offending for offence category (3), was intoxicated at time of offending (2), cooperated with police (2), reduced risk of reoffending (2) and good prospects of rehabilitation (1).

Discussion

This exploratory study uses qualitative research methods to explore the types of aggravating and mitigating factors that Australian judges take into consideration when sentencing violent offenders and sexual offenders. The specific research question that this study aims to answer is: what are the aggravating and mitigating factors that judges consider when sentencing violent offenders versus sexual offenders? The main findings are presented in this section.

Summary of findings

This study used a retrospective content analysis to identify the aggravating and mitigating factors in cases involving violent offenders versus sexual offenders. The findings pertaining to each offender group are summarised below.

Findings for the violent offender cases

For the group of 25 violent offenders, the most common aggravating factors in order of frequency are prior offending, substance use problems, serious violent offending, past violence, prolonged effects on victim, victim impact statement, used a weapon, soft target, disregard for/previous breaches of court orders, deliberate actions, series of offending, did not cooperate with police, lack of apology to victim, not deterred by prior sentences and no contrition/remorse. These aggravating factors can be grouped under the themes of offender-related characteristics (i.e. prior offending, substance use problems, past violence, disregard for/previous breaches of court orders, not deterred by prior sentences, no contrition/remorse, did not cooperate with police, lack of apology to victim), offence-related characteristics (i.e. serious violent offending, used a weapon, deliberate actions, series of offending) and victim-related characteristics (i.e. victim impact statement, prolonged effects on victim, soft target).

Overall, a larger number of offender-related (e.g. prior offending) and offence-related (e.g. serious violent offending, used a weapon) aggravating factors are the most commonly cited factors in the sentencing remarks about violent offenders, in comparison to victim-related characteristics. This finding is consistent with previous research (Davidson & Rosky, 2015; Simon, 1996; van Wingerden et al., 2016; Welsh & Ogloff, 2008) and could account for sentencing disparities between different offenders charged with similar offences (Bagaric & Edney, 2015). For instance, Welsh and Ogloff (2008) found that offenders were more often sentenced to imprisonment if they were convicted of serious offences and had a prior criminal history. Likewise, Simon (1996) found that violent offenders received longer prison sentences if they victimised strangers, used a weapon, injured their victims, faced more serious charges, had longer adult criminal records and did not plead guilty. Moreover, Davidson and Rosky (2015) observed that male and female offenders received longer sentences if they had prior criminal histories and substance use problems. Finally, van Wingerden et al. (2016) found that offenders were more likely to receive longer prison terms due to offender-related characteristics such as being born in a foreign country, having accommodation problems, having criminal companions, failing to cooperate with authorities, denying responsibility for offending, showing a lack of remorse and having financial problems.

The most common mitigating factors in order of frequency in the violent offender cases are substance use problems, pled guilty, childhood adversity, mental health issues, expressed some contrition/remorse, engaging in rehabilitation, age, intoxication, not premeditated, offending was out of character, health problems, employment, cooperated with police, no past violence, exceptional circumstances, did not instigate offending, did not use greater force, good rehabilitation prospects, no/few prior convictions, accepted

responsibility, positive support, time already served, Aboriginal background, carer responsibilities, rendered assistance to victim, victim's abusive behaviour and disadvantage. Overall, these mitigating factors can be grouped under the themes of offender-related characteristics (i.e. substance use problems, pled guilty, childhood adversity, mental health issues, expressed some contrition/remorse, engaging in rehabilitation, age, offending was out of character, health problems, employment, cooperated with police, no past violence, exceptional circumstances, good rehabilitation prospects, no/few prior convictions, accepted responsibility, positive support, time already served, Aboriginal background, carer responsibilities, disadvantage) and offence-related characteristics (i.e. intoxication, not premeditated, did not instigate offending, did not use greater force, rendered assistance to victim, victim's abusive behaviour). These findings are generally in line with previous research. For instance, Welsh and Ogloff (2008) observe that offenders were less often sentenced to a term of imprisonment when the judge cited offender-related mitigating factors such as reduced culpability, rehabilitative efforts, guilty plea and disadvantaged background. Likewise, Davidson and Rosky (2015) found that offenders were more likely to receive shorter sentences due to offender-related mitigating factors such as guilty plea or mental health problems. Further, van Wingerden et al. (2016) discovered that female offenders were less likely to receive custodial sentences due to carer responsibilities or health/emotional concerns, and that younger offenders also received shorter sentences ostensibly because their youth mitigated their level of culpability. Overall, van Wingerden and colleagues found that offenders were less often sentenced to imprisonment and/or received shorter prison terms due to offender-related mitigating factors such as psychological problems and substance use problems.

In the current study, the most important mitigating factors in the violent offender

cases appear to be good rehabilitation efforts/prospects, severe psychiatric issues, exceptional circumstances and old age. These mitigating factors reduced culpability and commonly resulted in offenders receiving a bond or supervision order rather than a term of imprisonment. As discussed above, these findings are in accordance with previous research (Davidson & Rosky, 2015; van Wingerden et al., 2016; Welsh & Ogloff, 2008).

Findings for the sexual offender cases

In the sample of 12 sexual offenders, the most common aggravating factors in order of frequency are serious offending, prolonged effects on victim, victim impact statements, breach of trust, prior offending, age/vulnerability of victims, history of substance use problems and denial/lack of remorse/refusal to accept responsibility. As in the case of the violent offenders, these aggravating factors can be grouped under the themes of offender-related characteristics (i.e. prior offending, history of substance use problems, denial/lack of remorse/refusal to accept responsibility), offence-related characteristics (i.e. serious offending) and victim-related characteristics (i.e. prolonged effects on victim, victim impact statements, breach of trust, age/vulnerability of victims). This pattern of aggravating factors mirrors those observed in the study by Patrick and Marsh (2011), who found that characteristics of the offender (e.g. age, higher income), victim (e.g. younger victim, many victims) and offence (e.g. total number of charges, use of force) are aggravating factors that increase the likelihood of a custodial sentence in a sample of child sex offenders.

In contrast to the violent offender cases, victim-related characteristics appear to be the most commonly cited aggravating factors in the sexual offender cases in the current sample. The impact and severity of the offending on victims of sexual offences is a serious aggravating factor (Bagaric & Edney, 2015),

thus it is not surprising that victim-related aggravating factors were key sentencing considerations in these cases. However, this finding is somewhat inconsistent with prior research. For instance, Patrick and Marsh (2011) found that offence-related characteristics were the most salient predictors of sentencing outcomes for child sex offenders. Likewise, McCormick et al. (1998) found that instrumentality of force and offender–victim relationship were the sole predictors of sentence length in that stranger rapists used greater force, caused more physical injury to their victims and received longer sentences. Further, Amirault and Beauregard (2014) observed that offence-related characteristics (e.g. victim is a stranger, used a weapon) were generally more predictive of sentence severity in cases of sexual offenders that had targeted adults, whereas offender-related characteristics (e.g. age, prior history, admitting to sexual issues, current additional charges) were generally more predictive of sentence severity in cases of sexual offenders that had victimised children. Thus, the results of the current study do suggest that victim-related aggravating factors are central sentencing considerations in cases of Australian sexual offenders, and that judges may perceive victim-related aggravating factors as more salient than offender-related or offence-related aggravating factors in such cases. Future research that explores judges' reasoning for their sentencing decisions would help to clarify this issue.

The most common mitigating factors in the sexual offender cases are pled guilty, mental health issues, substance use problems, childhood adversity, accepted responsibility for offending/showed remorse, motivated to engage in treatment, age, no relevant past criminal record, less serious type of offending for offence category, was intoxicated at time of offending, cooperated with police, reduced risk of reoffending and good prospects of rehabilitation. Similar to the cases of the violent offenders, these mitigating factors can be grouped under the themes of offender-related

characteristics (i.e. pled guilty, mental health issues, substance use problems, childhood adversity, accepted responsibility for offending/showed remorse, motivated to engage in treatment, age, no relevant past criminal record, cooperated with police, reduced risk of reoffending, good prospects of rehabilitation) and offence-related characteristics (i.e. less serious type of offending for offence category, was intoxicated at time of offending). These findings are largely in line with those of Deering and Mellor (2009), who found that mitigating factors such as psychological issues, personal adversities and good prospects of rehabilitation were cited by judges as reducing the offender's culpability in child sex abuse cases.

Despite the plethora of mitigating factors that are cited in the sentencing remarks, all sexual offenders in the current study were nonetheless sentenced to terms of imprisonment. This finding is consistent with previous Australian research on sexual offenders (Deering & Mellor, 2009), yet it differs from the group of violent offenders. Recall that seven violent offenders in the current study did not receive a term of imprisonment; the fact that all sexual offenders in the current study were sentenced to imprisonment could be due to the widespread perception of the seriousness of sexual crimes, particularly those involving child victims, and the subsequent desire to punish those offenders who commit sexual crimes irrespective of mitigating factors (Hudson, 2012; Warner et al., 2017).

Implications

The findings of this study have four key implications. Firstly, offender-related (e.g. prior criminal history, past violence) and offence-related (e.g. serious violent offending, used a weapon) aggravating factors appear to be the most important judicial sentencing considerations in cases of violent offenders from South Australia. The presence of such aggravating factors in cases involving

violent offences is likely to increase the sentence that is imposed on the offender, irrespective of mitigating factors and victim-related factors. This finding is in accordance with public opinion research on the salience of aggravating factors in sentencing considerations (Warner et al., 2017) and suggests that the judicial sentencing decisions in these specific cases are broadly in line with public opinion. Policymakers and the judiciary can thus use this information to guide sentencing laws and practices to ensure consistency and fairness across Australian states (Bagaric & Edney, 2015).

Secondly, the mitigating factors of rehabilitation efforts, severe psychiatric issues, exceptional circumstances and old age appear to be the most salient judicial considerations as to whether or not custodial sentences are imposed on violent offenders in South Australia. That is, judges consider the violent offender's culpability to be reduced to such a degree that mercy or leniency in sentencing is deserved if these mitigating factors are present (Bagaric & Edney, 2015). This is not in line with public opinion. Specifically, the Victorian jurors in the study conducted by Warner et al. (2017) placed little weight on mitigating factors in determining sentencing outcomes, whilst 79% of a representative national sample of Australians surveyed by Mackenzie et al. (2012) agreed that sentences handed down by Australian courts for violent crimes were too lenient. Policymakers, the judiciary, sentencing advisory councils and legal scholars should improve their efforts to educate the public about how mitigating factors are taken into consideration in actual sentencing decisions in order to boost public confidence in sentencing practices and decisions (Mackenzie et al., 2012). Exploring the mismatch in public opinions about sentencing violent offenders versus actual judicial sentencing considerations is an area for future research and policy development in Australia.

Thirdly, victim-related aggravating factors (i.e. prolonged effects on victim, victim impact statements, breach of trust, age/

vulnerability of victims) appear to be the most important judicial sentencing considerations in cases of sexual offenders in South Australia. This finding indicates that judges do not use a 'one size fits all' approach to sentencing but instead appear to give more weight to different types of offender-, offence- and victim-related aggravating factors depending on whether they are sentencing a violent offender versus a sexual offender. This has implications for issues such as mandatory sentencing and judicial sentencing guidelines (Bagaric & Edney, 2015). The salience of victim-related aggravating factors in cases of sexual offenders is in line with opinion survey research with legal professionals from South Australia (Erez & Rogers, 1999), which revealed that victim impact statements are important to sentencing considerations because they provide useful information about the level of harm or injury inflicted on the victim. Overall, it appears that victim injury and vulnerability aggravates the sentences that are imposed on sexual offenders. Future research could explore whether or not this finding is consistent in other Australian jurisdictions.

Finally, South Australian judges consider sexual offences to be serious types of crime and therefore deserving of harsher punishment irrespective of mitigating factors. This study indeed found that all sexual offenders received custodial sentences irrespective of a multitude of mitigating factors that were identified in each case. This differs from the cases of the violent offenders, whereby certain mitigating factors were seen to reduce culpability and hence result in a more lenient sentencing outcome. In other words, judges appear to place little weight on mitigating factors when sentencing sexual offenders. This is consistent with public opinion research which has found that sexual offences are considered serious types of crime that are deserving of harsher punishment (Hudson, 2012; Warner et al., 2017). Thus, the results of this study suggest that judicial sentencing decisions are broadly in line with public

opinion in cases of sexual offenders. Future research is required to explore the nuances in Australian sentencing practices according to different types of sexual offences and public opinion about them, for example, in cases of child sex offenders versus stranger rapists (cf. Amirault & Beauregard, 2014).

Limitations

The findings of this study must be viewed in the context of some key limitations. Importantly, the data from this study is extracted from the sentencing remarks of 37 criminal cases that had sentences handed down in South Australia during June and July 2017. The sample contains a small number of offenders overall, with only 2 women, and small subgroups of 25 violent offenders and 12 sexual offenders. Accordingly, the extent to which these cases were representative of the broader Australian criminal population is unknown. Moreover, the small overall sample size and uneven subgroup sizes prevented the use of quantitative analyses using parametric tests to explore group differences. For example, it would have been an informative extension of prior research to explore whether or not there are any differences in the aggravating and mitigating factors that were considered in Australian sexual offender cases involving child victims versus those involving adult victims (cf. Amirault & Beauregard, 2014). Further research using larger and more diverse Australian samples is required in order to generalise the results of the current study and derive broader implications for other Australian jurisdictions.

This study utilised a content analysis of retrospective judicial sentencing remarks from South Australian cases to answer the research question. These sentencing remarks are drawn from a pool of criminal cases made publicly available on the Courts Administration Authority of South Australia's website. Given that the website only lists four weeks' worth of criminal cases it was impossible to sample all the cases. Thus, the available

sample is incomplete and would likely change depending on the date on which the website was accessed. Accordingly, selection bias may have impacted on the findings of this study. Future researchers should access wider databases of sentencing remarks, such as the Australasian Legal Information Institute (AustLii) database. Further, some sentencing remarks contain incomplete or minimal information, thus reducing the quality of the data. Future studies could use mixed methods to maximise data quality, such as by reviewing file information, conducting a self-report survey or interviewing judges or offenders.

Conclusion

This exploratory study used qualitative research methods to examine the types of aggravating and mitigating factors that South Australian judges took into consideration when sentencing violent offenders versus sexual offenders. The results reveal that offender- and offence-related aggravating factors were more salient judicial sentencing considerations in the cases of the violent offenders, whereas victim-related aggravating factors were more salient judicial considerations in the cases of the sexual offenders. Certain mitigating factors were salient considerations in the cases of the violent offenders, reducing culpability and subsequently resulting in a more lenient sentence, yet these factors appear to have been of little importance to the judges in the cases of the sexual offenders.

Declaration of conflicts of interest

Dr Ninawa Butrus has declared no conflicts of interest.

Ethical approval

This article does not contain any studies with human participants or animals performed by any of the authors. It received ethics approval from the Griffith University Ethics Committee.

References

- Amirault, J., & Beauregard, E. (2014). The impact of aggravating and mitigating factors on the sentence severity of sex offenders: An exploration and comparison of differences between offending groups. *Criminal Justice Policy Review*, 25, 78–104. doi:10.1177/0887403412462234
- Australian Bureau of Statistics. (2016). *Prisoners in Australia, 2016 (cat. no. 4517.0)*. Retrieved from <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2016~Main%20Features~Prisoner%20characteristics,%20Australia~4>
- Bagaric, M. (2014). From arbitrariness to coherence in sentencing: Reducing the rate of imprisonment and crime while saving billions of taxpayer dollars. *Michigan Journal of Race & Law*, 19, 349–413.
- Bagaric, M., & Edney, R. (2015). *Sentencing in Australia* (2nd ed.). Sydney, NSW: Thomson Reuters.
- Davidson, M. L., & Rosky, J. W. (2015). Dangerousness or diminished capacity? Exploring the association of gender and mental illness with violent offense sentence length. *American Journal of Criminal Justice*, 40, 353–376. doi:10.1007/s12103-014-9267-1
- Deering, R., & Mellor, D. (2009). Sentencing of male and female child sex offenders: Australian study. *Psychiatry, Psychology and Law*, 16, 394–412. doi:10.1080/13218710902930291
- Edgely, M. (2009). Common law sentencing of mentally impaired offenders in Australian courts: A call for coherence and consistency. *Psychiatry, Psychology and Law*, 16, 240–261. doi:10.1080/13218710802242037
- Erez, E., & Rogers, L. (1999). Victim impact statements and sentencing outcomes and processes: The perspectives of legal professionals. *The British Journal of Criminology*, 39, 216–239.
- Hudson, N. (2012). *Community attitudes to offence seriousness*. Melbourne: Sentencing Advisory Council.
- Judicial Conference of Australia. (n.d.). *Judge for yourself: A guide to sentencing in Australia*. Retrieved from <https://www.sentencingcouncil.vic.gov.au/publications/judge-for-yourself-a-guide-to-sentencing-in-australia>
- Lune, H., & Berg, B. L. (2017). *Qualitative research methods for the social sciences* (9th ed.). Essex, UK: Pearson.
- Mackenzie, G., Spiranovic, C., Warner, K., Stobbs, N., Gelb, K., Indermaur, D., ... Bouhours, T. (2012). Sentencing and public confidence: Results from a national Australian survey on public opinions towards sentencing. *Australian and New Zealand Journal of Criminology*, 45, 45–65. doi:10.1177/0004865811431328
- McCormick, J. A., Maric, A., Seto, M. C., & Barbaree, H. (1998). Relationship to victim predicts sentence length in sexual assault cases. *Journal of Interpersonal Violence*, 13, 413–420.
- Patrick, S., & Marsh, R. (2011). Sentencing outcomes of convicted child sex offenders. *Journal of Child Sexual Abuse*, 20, 94–108. doi:10.1080/10538712.2011.541356
- Roberts, J. V., & Edgar, A. (2006). *Victim impact statements at sentencing: Judicial experiences and perceptions a survey of three jurisdictions*. Canada: The Department of Justice Canada.
- Ross, S., & Lawrence, J. A. (2005). Sentencing mentally disordered offenders: Factors that predict sentencers' decisions about treatment. *Psychiatry, Psychology and Law*, 12, 174–183.
- Simon, L. M. J. (1996). Legal treatment of the victim-offender relationship in crimes of violence. *Journal of Interpersonal Violence*, 11, 94–106.
- Tudor, S. K. (2008). Why should remorse be a mitigating factor in sentencing? *Criminal Law and Philosophy*, 2, 241–257. doi:10.1007/s11572-007-9044-z
- van Wingerden, S., van Wilsem, J., & Johnson, B. D. (2016). Offender's personal circumstances and punishment: Toward a more refined model for the explanation of sentencing disparities. *Justice Quarterly*, 33, 100–133. doi:10.1080/07418825.2014.902091
- Warner, K., Davis, J., Spiranovic, C., Cockburn, H., & Freiberg, A. (2017). Measuring jurors' views on sentencing: Results from the second Australian jury sentencing study. *Punishment & Society*, 19, 180–202. doi:10.1177/1462474516660697
- Welsh, A., & Ogloff, J. R. P. (2008). Progressive reforms or maintaining the status quo? An empirical evaluation of the judicial consideration of Aboriginal status in sentencing decisions. *Canadian Journal of Criminology and Criminal Justice*, 50, 491–517. doi:10.3138/cjccj.50.4.491